

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:07-HC-2187-D

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	
v.	)	<u>MOTION TO DISMISS</u>
	)	
KEVIN LOU ENGLISH,	)	
	)	
Respondent.	)	

NOW COMES the Respondent, Kevin Lou English, by and through undersigned counsel, and moves the Court for an order dismissing the pending 18 U.S.C. § 4248 (hereinafter “the statute”) action for the reason that the statute is unconstitutional in that it deprives the Respondent the Equal Protection of the Law and procedural and substantive Due Process of the Law.

The Respondent notes the Fourth Circuit has rejected the contention that §4248 violates the Due Process Clause. United States v. Comstock, 627 F.3d 513, 518, 524 (4<sup>th</sup> Cir. 2010). Counsel for the Respondent further notes that this court has experienced substantial litigation concerning the constitutionality of the statute and its’ associated procedures and has rejected Due Process and Equal Protection contentions that may be identical to those being asserted by this Respondent. Those contentions have not been addressed by the United States Supreme Court and counsel accordingly asserts these challenges to preserve the Respondent’s constitutional claims.

The Respondent further contends that the application of the statute violates the Respondent’s protection against double jeopardy, denies him a fair trial as the burden of

proof in such matters is appropriately the “beyond a reasonable doubt” standard, may allow the Government to depose the Respondent thereby compelling him to be a witness against himself in violation of the Fifth Amendment, and creates a small class of persons- Federal detainees- that are subject to certification as sexually dangerous under the statute.

*The Respondent does not desire a hearing on these issues at the present time.*

Respectfully submitted, this 13<sup>th</sup> day of November, 2011.

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## CERTIFICATE OF SERVICE

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DATE: 11/13/2011

/s/ Lawrence H. Brenner  
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